TABLE OF CONTENTS OF BRIEF

	Page
Counter-statement of the questions presented for review	1
Counter-statement of the case	2
Correction or modification of the facts as stated in the opinion of the Court of Appeals and the memorandum order of the District Court	6
ARGUMENT	
I	
THE PETITION FOR A WRIT SHOULD BE DENIED	10
CONCLUSION	
The petition for a writ of certiorari should be denied.	12

TABLE OF CONTENTS OF APPENDIX

	Page
Excerpt from answer of Hellenic Lines in the District Court to respondent's complaint (par. "3" of answer)	2a

TABLE OF AUTHORITIES

Page

Bloomer v. Liberty Mutual Insurance Co., 445 U.S. 74, 100 S. Ct. 925, 63 L. Ed. 2d 215; 1980. 10

Sprague v. Ticonic National Bank, 307 U.S. 161 7

Valentino v. Rickners Rhederei, G.M.B.H., SS Etha (2 Cir., 1977), 552 F. 2d 406. 7

Counter-Statement of the Questions Presented for Review

1. In a longshoreman's negligence action against a vessel owner, where (a) the stevedore services, while provided in the name of the vessel owner, are, however, regarded and treated by the vessel owner as being actually provided by another entity separate and distinct from the vessel owner - namely by, in the vessel owner's own words, "an independent contractor", who is also regarded and treated by the vessel owner as being, also in the vessel's own words, "the employer" of the longshoreman, and (b) the recovery in the action is insufficient to satisfy both (I) the lien of the attorney for the longshoreman, for his fee and expenses, and (II) the lien of the stevedore - "independent contractor" - "employer" of the longshoreman for its workmen's compensation payments, does the lien of the attorney have priority over the stevedore's lien?

Counter-statement of the case

Respondent, a longshoreman, was injured aboard a vessel owned by the petitioner, Hellenic Lines Ltd. (A4*, A 25).

Thereafter he brought an action against Hellenic Lines Ltd., as the owner of the vessel, for damages for his injuries, alleging that those injuries were due to Hellenic's negligence (A4, A25).

In its answer to respondent's complaint, Hellenic Lines stated (2a**) that it

> "Admits that it owned, operated and controlled the Grigorious C IV, except as to those parts of the vessel, her equipment, appliances and appurtenances which were under the super-

*"A", followed by a number, refers to pages of petitioner's Appendix, attached to petitioner's petition.

**Numbers, followed by "a", refer to pages of the Appendix attached to this brief.

vision, operation, direction and control of a stevedore, an independent contractor, the employer of plaintiff, who was stevedoring the vessel and supplied, furnished and maintained the equipment and gear used in the stevedoring operation and directed, supervised and controlled the method and manner of performance of the stevedoring work, including the work which the plaintiff was performing at the time of his alleged accident..." (underscoring supplied).

Respondent recovered a verdict in the amount of $17,150 (A4), on which judgment was entered (A 25, A53-55).

Prior to trial respondent had been paid $13,554.91 in workmen's compensation and medical benefits (A25), the amount or amounts being paid in the name of Hellenic Lines Ltd. (A4, A25), but in the capacity of "a stevedore", acting as "an independent contractor", who was "the employer" of respondent (2a ; A25).

Following entry of the judgment,

respondent's attorney asserted a lien against the recovery of $17,150, in the amount of $7,109.36, for his fee and disbursements, and applied to the court for an order directing Hellenic Lines to make payment, as a first charge against the judgment (A4, A26).

Hellenic Lines, however, asserted that its lien in the amount of $13,544.91 was a first charge against the judgment (A4, A25-26).

The District Court gave priority to the compensation lien, and awarded respondent's attorney the balance remaining after deducting the amount of that lien, $13,544.91, from the recovery of $17,150, which came to $3,595.09 (A5, A37, A56-A57).

Respondent appealed to the United States Court of Appeals for the Second Cir-

cuit from the amended judgment (A1).

The Court of Appeals reversed, holding that the lien of respondent's attorney has priority over the workmen's compensation lien (A4, A18). 668 F. 2d 650.

Correction or modification of the facts as stated in the opinion of the Court of Appeals and the memorandum order of the District Court

Various statements in the opinion of the Court of Appeals and memorandum order of the District Court do not appear to take cognizance of the fact that, as Hellenic Lines itself expressly acknowledged (2a), the stevedore services, while provided in the name of Hellenic Lines, the vessel owner, were, however, regarded and treated by Hellenic, as being actually provided by another entity, separate and distinct from itself - namely, in Hellenic's own words, "by an independent contractor", who was also regarded and treated by Hellenic as also being, again in Hellenic's own words, "the employer" of the respondent longshoreman (2a) - thus making Hellenic Lines as vessel owner and Hellenic Lines as stevedore two separate and distinct entities.

The failure of the District Court and Court of Appeals to take cognizance of said facts resulted in their both mistakenly treating Hellenic Lines as vessel owner and Hellenic Lines as stevedore as one and the same entity, and holding, as the Court of Appeals observed, in agreement with the District Court,

> "that the common fund rationale (Sprague v. Ticonic National Bank, 307 U.S. 161; opinion of the Court of Appeals, 668 F. 2d 650-651, citing Sprague, supra; see Valentino v. Rickners Rhederei, G.M.B.H., SS Etha, 552 F. 2d 406; 2d Cir., 1977, cited and discussed at 668 F. 2d, at p. 650) provides no support for priority of the attorney's lien when the shipowner and the stevedore are the same entity" 668 F. 2d. at p. 651 (underscoring and matter in parentheses supplied).

Illustrative of the statements in the opinion of the Court of Appeals and memorandum order of the District Court which do not take cognizance of

Hellenic's position that Hellenic as vessel owner and Hellenic as stevedore were and are two (2) different and distinct entities,/are the following:

but treat them as the same entity,

> ".... This case, where the shipowner and stevedore are the same entity ....".(Opinion of the Court of Appeals, A5, latter half of page).
>
> "....The shipowner and the stevedore are the same entity".(Opinion of the Court of Appeals; A7, last two lines).
>
> ".... The identity between the vessel owner and stevedore..." (Opinion of the Court of Appeals; A7; center of page).
>
> ".... in this case the shipowner is also the stevedore." (Opinion of the Court of Appeals; A13).
>
> ".... The shipowner and stevedore are the same entity." (Opinion of the Court of Appeals; A14, center of page).
>
> ".... Hellenic's decision to perform its own stevedoring services...." (Opinion of the Court of Appeals; A15).
>
> "....The shipowner acts as its own stevedore..." (Opinion of the Court of Appeals; A16).

".... The stevedore and the vessel owner are the same ...." (Opinion of the Court of Appeals; A17).

".... Hellenic, as stevedore ...." (Opinion of the Court of Appeals; A17).

"....Hellenic's preference not to contract for stevedoring services." (Opinion of the Court of Appeals; A18).

".... The defendant vessel owner was also plaintiff's employer." (Memorandum order of District Court; A26; first complete par., first sentence).

".... the self-insured vessel employed the longshoreman ...." (Memorandum order of District Court; A26).

".... Hellenic Lines, as employer...." (Memorandum order of District Court; A33).

".... The vessel owner is also employer...." (Memorandum order of District Court; A34).

ARGUMENT

I

THE PETITION FOR A WRIT SHOULD BE DENIED

While it is true that this Court has never passed upon the question presented in this case, set forth at pp. 1, supra, nevertheless, as the Court of Appeals observed (668 F. 2d, at p. 651; rt. hd. col.),

> "Though the issue before us differs from the issue in Bloomer (Bloomer v. Liberty Mutual Insurance Co., 445 U.S. 74, 100 S. Ct. 925, 63 L. Ed. 2d 215; 1980), we think the Supreme Court's approach to the problem, and particularly its analysis of the legislative history of the LHWCA, leads to a conclusion that the compensation lien applies only to the longshoreman's net proceeds from the negligence suit, after deduction of litigation expenses and a reasonable attorney's fee" (matter in parentheses supplied).

See pp. 651-652 of 668 F. 2d for exposition of this court's "approach

to the problem, and particularly its analysis of the legislative history of the LHWCA."

Except for the fact that the Court of Appeals mistakenly treated Hellenic as vessel owner and Hellenic as stevedore as one and the same entity - when they were and are, as Hellenic acknowledged, two (2) separate and distinct entities - with the result that the Court of Appeals, like the District Court, upon the basis of that mistaken premise, erroneously held that the common fund rationale provides no support in this case for priority of the attorney's lien (668 F. 2d, at p. 651) - except for that fact, the opinion of the Court of Appeals fully and completely catalogues the reasons why, as it concluded, the attorney's lien in the case at bar has priority over the stevedore's lien.

Those reasons, we respectfully submit, constitute in effect an impressive armamentarium of compelling arguments why the petition for a writ should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

IRVING B. BUSHLOW
Counsel of record for
respondent

Appendix

Excerpt from answer of Hellenic Lines in the District Court to respondent's complaint (par. "3" of answer)

Admits that it owned, operated and controlled the Grigorious C IV, except as to those parts of the vessel, her equipment, appliances and appurtenances which were under the supervision, operation, direction and control of a stevedore, an independent contractor, the employer of plaintiff, who was stevedoring the vessel and supplied, furnished and maintained the equipment and gear used in the stevedoring operation and directed, supervised and controlled the method and manner of performance of the stevedoring work, including the work which the plaintiff was performing at the time of his alleged accident..." (underscoring supplied).